



NATIONAL CONFERENCE ON THE CONSTITUTIONAL REVIEW PROCESS IN SIERRA LEONE

**GUARANTEEING SOCIO-ECONOMIC AND CULTURAL
RIGHTS UNDER THE NEW CONSTITUTION**

**By Rashid Dumbuya
International Human Rights Lawyer & Executive Director, LEGAL LINK**

January 2021

Roadmap of presentation

- * **Aims & Objectives**
- * **General Introduction**
- * **ECOSOC rights in Sierra Leone –the statusquo**
- * **The Push for recognition of ECOSOC rights by CSOs**
- * **Arguments against recognition of ECOSOC rights.**
- * **Why ECOSOC rights must be guaranteed in the Const.**
- * **Justiciability of ECOSOC rights in other jurisdictions**
- * **Proposed recommendations to the CRC.**
- * **Interim measures to be adopted by the courts.**
- * **Conclusion.**

Aims & Objectives

- ❖ To help Participants have a general understanding about the status quo of ECOSOC rights in Sierra Leone and efforts being made to recognize them.
- * To showcase the cost/benefit analysis of guaranteeing ECOSOC rights.
- * To show how other jurisdictions are dealing with ECOSOC rights as well as their courts.
- * To Propose recommendations to the TC on Guaranteeing ECOSOC rights in the new constitution.
- * To proffer interim measures to be adopted by our courts in dealing with ECOSOC rights.

General Introduction

- * **Socio – economic and cultural rights include among other things the right to food, housing, education, health, water, cultural life, social security, fair minimum wage etc.**
- * **International recognition of these rights dates as far back as the early 20th century when the International Labour Organization, then an agency of the League of Nations adopted a series of conventions intended to improve labour standards around the world.**

General Introduction Cont'd...

- * However, after World War 11, a good number of international treaties and conventions guaranteeing ECOSOC rights began to emerge, the most recent being the Universal Declaration of Human Rights and the International Covenant of ECOSOC Rights.**
- * Efforts have also been made within the African Regional Human Rights system to codify socio-economic and cultural rights. For example, the African Charter on Human and People Rights protects among others the right to work, health and education.**

ECOSOC rights in Sierra Leone - the statusquo

- * Despite the fact that Sierra Leone has signed and ratified many international covenants that guarantees ECOSOC rights such as the UDHR, ICESCR, ACHPR to name but a few, it is vital to note that the 1991 constitution of Sierra Leone does not recognize, guarantee or allow for the enforcement of ECOSOC rights in the courts of law.**
- * The 1991 constitution only guarantees civil and political rights enshrined under chapter 3.**

ECOSOC rights in Sierra Leone - the statusquo cont'd...

- The 1991 Constitution under Chapter 2 provides for a framework through which ECOSOC OBJECTIVES can be realized progressively. But by section 14 of the said constitution however, the chapter 2 ECOSOC objectives do not confer legal rights.
- * They merely exist as fundamental principles of state policy to be taken into consideration in the governance of the country and in the making of laws by parliament.

The Push for recognition of ECOSOC rights by CSOs

- * Irrespective of the plethora of calls by the UN, African Commission, NGOs, Human Rights defenders and Civil Society Organizations for recognition of ECOSOC rights, Sierra Leone is yet to guarantee them in her Constitution.
- * Some attempts were however made in 2008 by the Peter Tucker's led CR Commission and later in 2016 by the Justice Cowan led CRC to put them into the new constitution.
- * The Draft Constitution was however abandoned by the then government.
- * The new govt of President Bio has recently set up a Technical Committee to look into the CRC report and advise cabinet accordingly.

The Push for the recognition of ECOSOC rights by CSOs Cont'd...

- * **The ongoing constitutional review process by the Technical Committee will therefore provide a window of opportunity for such plausible recommendations to be perhaps considered.**
- * **Recognition of ECOSOC rights is currently based on piecemeal interventions such as the creation of a few legislations like the Disability Act 2011. (right to education).**

Arguments against recognition and enforcement of ECOSOC rights

Arguments forwarded by many states in defense of not been able to guarantee or enforce ECOSOC rights within their jurisdiction.

- * Lack of resources
- * Over-population
- * Under-development
- * Increase in demand for these services/amenities
- * Lead to unending litigations against govts.

Why ECOSOC rights must be guaranteed in the 1991 Constitution

- * Sierra Leone is a party to many international treaties and conventions that guarantees ECOSOC rights (UDHR, ICESCR, ACHPR). Not guaranteeing ECOSOC rights at the domestic level is a clear violation of international law.**

Why ECOSOC rights must be guaranteed in the Constitution Cont'd...

- * Secondly, the country is rich with natural resources and endowments (15 Viable resources). Hence, the argument of lack of resources by the state to guarantee ECOSOC rights to its citizens is untenable.
- * Also, Sierra Leone's population is just around 7 million. It is not an over-populated nation as compared to Nigeria, Kenya or South Africa. It's natural resources can match the available population if managed well.

Why ECOSOC rights must be guaranteed in the Constitution Cont...

- * Furthermore, ECOSOC rights are core to the existence and survival of the citizens in a state. To deny citizens of these rights will constitute an attack to their very existence and survival. For instance, the right to health and the right to housing have been seen as 'survival rights' while the right to education has been reputed to be an 'empowerment or emancipation right.'
- * Finally, having a constitutional provision that guarantees enforceability of ECOSOC rights will make the state more accountable and sensitive to the aspirations and welfare of its citizens.

Justiciability of ECOSOC rights in other jurisdictions

South Africa is an example of the few countries in Africa that guarantees ECOSOC rights in its Bill of Rights.

See The Mazibuko Case (2009) on the right to water.

The applicants were 5 poor residents of Soweto who challenged the City of Johannesburg new water policy as in contravention of section 27(1) of the South Africa Constitution. The Johannesburg High Court ruled in favour of the applicants. The City of Johannesburg appealed to the Supreme Court of Appeal and the Constitutional Court of South Africa. Both courts upheld the decision of the High Court in substance, but on different grounds.

Justiciability of ECOSOC rights in other jurisdictions

The Treatment Action Campaign Case (2002) on the right to health.

Treatment Action Campaign in 2002 filed a case against the South Africa Government alleging that the restrictions on the provisions of the anti-retroviral drugs to HIV positive patients in the country is a violation of the right to access health care services, and demanding a program to make the drug available in the country. The High Court ruled in favour of the applicant. The Govt appealed to the Constitutional Court but it was further rejected by the said Court.

Proposed Recommendations to the TC.

- * Firstly , the fundamental Principles of State Policy under Chapter 2 of the 1991 Constitution must be discarded and replaced with the following ECOSOC rights provisions under the heading:
- * The Right to Basic Food
- * The Right to Clean water
- * The Right to Affordable Housing
- * The Right to Basic Healthcare for all particularly Children, Women, PWD's and the Aged
- * The Right to Energy Access and Affordable Electricity Supply

Proposed Recommendations to the TC cont'd.....

- * **The Right to Education; with primary and secondary education being made compulsory and free for all.**
- * **The Right to an Approved Minimum Wage as well as to Social Security or Social Insurance when employed.**
- * **The Right to Cultural Life and Preservation particularly for indigenous peoples and their communities.**
- * **The Right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is the author.**

Proposed Recommendations to the TC cont'd...

- * Also, section 14 of the Constitution should be amended to now read as follows: “Every Citizen of Sierra Leone has an enforceable right to the minimum provisions under Chapter 2 of the new Constitution”
- * Furthermore, the above rights must also be made available, accessible and affordable to all citizens of Sierra Leone without discrimination as to gender, religion, tribe, region or political considerations etc.
- * Lastly, it must be clear in the new constitution that ECOSOC rights will be realized progressively and through international support so as to prevent the clamoring of citizens for these rights.

Interim measures to be adopted by our courts in dealing with ECOSOC rights

- * Application of the Pacta Sunt Savanda principle in judgments.**
- * Enforcing socio-economic and cultural rights through civil and political rights.**

The India Supreme Court is often credited for its judicial activism to develop a relatively mature ECOSOC rights jurisprudence within the country.

Interim measures to be adopted by our courts CONT'd...

Though the constitution does not guarantee ECOSOC rights, the Supreme Court of India has held in many cases that the right to life protected by India's constitution encompasses 'a right to food, water and healthcare'.

Lastly, is by our courts using progressive legislations to enforce ECOSOC rights. (for eg, Disability Act 2011).

Conclusion

Majority of the Sierra Leoneans still lack access to basic ECOSOC rights. A continuation of the status quo will ultimately ignite conflict, create disunity and increase social vices within the society.

But with a recognition and protection of Socio-economic and cultural rights under the new constitution, many of these inequalities will be remedied and a more cohesive, developed and progressive country will emerge.

I therefore call on the Technical Committee to incorporate ECOSOC rights into the new Constitution and to further guarantee their enforceability in the courts of law.

THE END

THANK YOU!

MERCI

